

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITES STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ALEXANDER S. TUZHILIN and  
RAVINARAYAN ARUNKUNDRAM

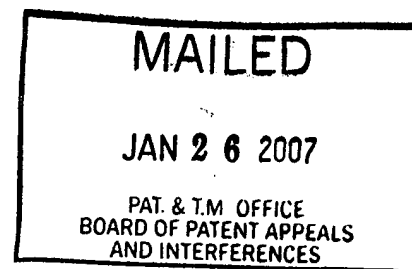
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Appeal No. 2006-1835  
Application 09/013,490  
Technology Center 2100

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Decided: January 26, 2007

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Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO and ALLEN R.  
MACDONALD, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING  
INTRODUCTION

This is a decision on Appellants' Request for Rehearing.

EXAMINER'S REJECTION UNDER 35 U.S.C. § 102

At pages 3-6 of the request, Appellants contend that "a critical feature recited in claim 38 has been misapprehended or overlooked by the Board." Appellants correctly point out that claim 38 requires "the at least one instruction

being executed on the network and requesting a performance of a monitoring operation to monitor the information on the network.” Appellants argue that Greenblatt nowhere discloses “instruction(s) being executable and monitoring information on the network.” Rather, Appellants argue that “the Greenblatt Patent transfers a request that initiates the data collection application on another platform; this means that the data collection application of the Greenblatt Patent resides on another platform, and in order to activate it, a request must be transmitted.”

We do not agree with Appellants’ claim construction. We see no language in claim 38 that the transmitted instruction monitors information on the network. Rather, claim 38 requires that “the at least one instruction . . . *requesting* a performance of a monitoring operation.” Thus, even if we adopt Appellants’ interpretation of the Greenblatt patent, Greenblatt discloses the claimed requesting.

#### REQUEST FOR CONFIRMATION

At page 3-6 of the request, Appellants request that the Board “confirm that independent claim 86 fully complies with 35 U.S.C. § 101 and 112.” We decline. Rather, we modify our comment with respect to claim 86.

Should there be further prosecution of these claims before the Examiner, we point out that claim 86 fails to recite any storage medium for the claimed “software arrangement.” (See Appellants’ admission at page 8 of the request.) As the claim is directed to disembodied software per se, claim 86 may raise issues under 35 U.S.C. § 101 and 35 U.S.C. § 112.

#### CONCLUSION

In view of the foregoing discussion, we grant Appellants’ request for rehearing to the extent of reconsidering our decision and we modify our comment with respect to claim 86, but we deny Appellants’ request with respect to making any substantive change thereto.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

REQUEST FOR REHEARING DENIED

PGC

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